

June 2003

Update: Crime Victim Rights Manual

Note:

Pursuant to Supreme Court Order No. 1998-50 and No. 2001-19, effective May 1, 2003, the Court adopted new subchapter 3.900 of the Michigan Court Rules, deleted subchapter 5.900, and amended rules in subchapter 6.900, all with regard to proceedings involving juveniles. Every effort has been made to identify and update the information contained in this publication where the amendments have a substantive impact. Changes limited to alpha-numeric order and related ministerial revisions are reserved for the next comprehensive update of the publication.

CHAPTER 2

The Legal Bases of Crime Victim Rights in Michigan

2.4 Limitations on Standing to Appeal Court Decisions

Replace the last 3 sentences at the bottom of page 18 and the top of page 19 with the following:

Effective May 1, 2003, MCR 3.903(A)(18) made a significant change in the definition of “party” as the term pertains to juvenile delinquency proceedings. A juvenile’s parent is no longer a “party” for purposes of juvenile delinquency proceedings. MCR 3.903(A)(18)(a).

2.8 Assessments and Funding

A. Assessments of Convicted and Adjudicated Offenders

Add the following to the end of the second paragraph on page 25:

At a juvenile's dispositional hearing, MCR 3.943(E)(5) limits a court to ordering the juvenile to pay only one assessment under the CVRA, regardless of the number of offenses.

CHAPTER 3

Overview of the Crime Victim's Rights Act

3.2 Definitions of Terms Used in the CVRA

A. "Assaultive Crime"

1. A conviction or adjudication for some "assaultive crimes" may not be set aside.

Insert the following sentence before the first paragraph on page 36:

Setting aside adjudications and convictions is wholly governed by statutory procedure. Amended court rule 3.925(F)(1)–(2) indicates that setting aside adjudications and convictions is a process subject to the procedures outlined in MCL 712A.18e and MCL 780.621 *et seq.*, respectively.

CHAPTER 4

Protection from Revictimization

4.5 Conditions of Release for Juveniles Pending Trial or Appeal

Replace the first two paragraphs of Section 4.5 (including the list lettered (a) through (h)) on pages 59-60 with the following:

Effective May 1, 2003, MCR 3.935(C)* lists factors that a court must consider when deciding whether to detain a juvenile or release him or her, with or without conditions. MCR 3.935(E), a new subrule, contains a nonexhaustive list of conditions of release that may be imposed upon a juvenile and provides for revocation of release for violations of such conditions.

When determining whether to release or detain a juvenile, the court must consider the following factors:

- “(a) the juvenile’s family ties and relationships,
- “(b) the juvenile’s prior delinquency record,
- “(c) the juvenile’s record of appearance or nonappearance at court proceedings,
- “(d) the violent nature of the alleged offense,
- “(e) the juvenile’s prior history of committing acts that resulted in bodily injury to others,
- “(f) the juvenile’s character and mental condition,
- “(g) the court’s ability to supervise the juvenile if placed with a parent or relative, and
- “(h) any other factor indicating the juvenile’s ties to the community, the risk of nonappearance, and the danger to the juvenile or the public if the juvenile is released.” MCR 3.935(C)(1)(a)–(h).

MCR 3.935(E) combines language found in former MCR 5.935(C) with a nonexhaustive list of specific conditions a court may impose on a juvenile’s release:

- “(1) The court may release a juvenile to a parent pending the resumption of the preliminary hearing, pending trial, or until further order without conditions, or, if the court determines that release with conditions is necessary to reasonably ensure the

*MCR 3.935(C) applies to juvenile delinquency cases, “traditional waiver” cases, and designated cases. See Section 3.2(H) for descriptions of these types of cases.

appearance of the juvenile as required or to reasonably ensure the safety of the public, the court may, in its discretion, order that the release of the juvenile be on the condition or combination of conditions that the court determines to be appropriate, including, but not limited to:

“(a) that the juvenile will not commit any offense while released,

“(b) that the juvenile will not use alcohol or any controlled substance or tobacco product,

“(c) that the juvenile will participate in a substance abuse assessment, testing, or treatment program,

“(d) that the juvenile will participate in a treatment program for a physical or mental condition,

“(e) that the juvenile will comply with restrictions on personal associations or place of residence,

“(f) that the juvenile will comply with a specified curfew,

“(g) that the juvenile will maintain appropriate behavior and attendance at an educational program, and

“(h) that the juvenile’s driver’s license or passport will be surrendered.” MCR 3.935(E)(1)(a)–(h).

In addition to other conditions of release, the court may require a juvenile’s parent, guardian, or legal custodian to post bail for the juvenile’s release. MCR 3.935(F). The court may also grant bail to a juvenile pending decision on a request for review of a referee’s recommended findings and conclusions, MCR 3.911(G), or on a request for rehearing, MCR 3.992(F). The juvenile’s parent, guardian, or legal custodian has the right to post bail for the release of the juvenile. MCL 712A.17(3).

The amended court rules provide a court with discretion over the consequences to a juvenile’s violation of a conditional release. If a violation is alleged, MCR 3.935(E)(2) permits the court to order the immediate apprehension and detention of the juvenile. After providing the juvenile with an opportunity to be heard, the court may elect to modify the conditions placed on the juvenile’s release or to revoke the juvenile’s release status.

4.7 Conditions of Probation and Parole Orders to Protect a Named Person

Insert the following at the end of Section 4.7 on page 62:

In making second and subsequent dispositions in juvenile delinquency proceedings, the court must consider

“imposing increasingly severe sanctions, which may include imposing additional conditions of probation; extending the term of probation; imposing additional costs; ordering a juvenile who has been residing at home into an out-of-home placement; ordering a more restrictive placement; ordering state wardship for a child who has not previously been a state ward; or any other conditions deemed appropriate by the court. Waiver of jurisdiction to adult criminal court, either by authorization of a warrant or by judicial waiver, is not considered a sanction for the purpose of this rule.” MCR 3.943(E)(2).

CHAPTER 5

Victim Privacy

5.2 The Victim May Permit an Interview by Defense Counsel

Add the following text after the second paragraph of Section 5.2 on page 76:

Taking depositions in juvenile proceedings requires the court's authorization.
MCR 3.922(A)(3).

5.9 Limitations on Access to Identifying Information in Court and Agency Documents

B. Juvenile Delinquency Cases

Replace the first two paragraphs under subsection (B) on pages 85–86 with the following:

The amended court rules effective May 1, 2003, added a new section to the list of files defined as confidential and to which only persons with a legitimate interest have access. MCR 3.903(A)(3)(b) characterizes the contents of a juvenile’s social file, including victim statements, as confidential. MCR 3.903(A)(3)(b)(vi).

Under MCL 712A.28(2) and MCR 3.925(D)(1), the general rule is that all *records* in juvenile cases are open to the general public, while *confidential files* are not open to the public. MCR 3.903(24) defines “records” as the pleadings, motions, authorized petitions, notices, memorandums, briefs, exhibits, available transcripts, findings of the court, register of actions, and court orders. MCR 3.903(A)(3)(a) defines “confidential files” as all materials made confidential by statute or court rule, including:

- : the separate statement about known victims of juvenile offenses as required by MCL 780.784,* and
- : the testimony taken during a closed proceeding pursuant to MCR 3.925(A) and MCL 712A.17(7).*

“Confidential files” may only be accessed by an individual the court determines has a legitimate interest in the files. MCR 3.925(D)(2). In determining whether a person has a legitimate interest, the court must consider:

- : the nature of the proceedings;
- : the public’s welfare and safety;
- : the interest of the minor; and
- : any restriction imposed by state or federal law.

*See Section 7.4 on this statement.

*See Section 5.14, below, for discussion of closing juvenile proceedings to the public.

CHAPTER 6

Victim Consultation With the Prosecuting Attorney & Other Rights

6.4 Limitations on the Court's Authority to Utilize Informal Procedures in Juvenile Delinquency Cases

A. The Court Must "Accept" Certain Petitions

Insert the following sentence before the beginning of the text under Section 6.4(A) on page 95:

Court rule amendments effective May 1, 2003 integrated procedural requirements specifically related to the CVRA into juvenile delinquency proceedings. MCR 3.932(B).

Replace the language of the third and fourth bullets on page 95 with the following:

- : direct that the juvenile and his or her parent, guardian, or legal custodian be notified to appear so that the matter can be handled through further informal inquiry;
- : before authorizing the petition to be filed, proceed on the consent calendar;

Insert the following language after the quotation of MCL 780.786(1), near the bottom of page 95:

If the alleged offense is one enumerated in the CVRA, a preliminary inquiry must be conducted on the record. MCR 3.932(A).

At the top of page 96, please note the slight change to the definition of "petition authorized to be filed" made by new MCR 3.903(A)(20). A "petition authorized to be filed" refers to written permission given by the court to file the petition containing the formal allegations against the juvenile or respondent with the clerk of the court.

Also, in the third line at the top of page 96, note that *four* procedural options must occur before the court may authorize the filing of a petition.

6.4 Limitations on the Court's Authority to Utilize Informal Procedures in Juvenile Delinquency Cases

A. The Court Must "Accept" Certain Petitions

2. The Michigan Court Rules govern practice and procedure in Michigan courts.

Insert the following paragraph on page 97 before "B. Required Procedures Before Removing the Case From the Adjudicative Process":

Amendments to the court rules involving juvenile proceedings (effective May 1, 2003) reconciled a potential for conflict between the Legislature's sole authority to enact substantive law and the Supreme Court's exclusive authority over practice and procedure in the courts. Newly added subrule 3.932(B) prohibits the removal of a juvenile case from the adjudicative process when the offense allegedly committed is listed in the CVRA, MCL 780.781(1)(f). In such cases, subrule (B) conditions removal from the adjudicative process on compliance with procedures set forth in the CVRA. MCL 780.786b.

6.4 Limitations on the Court's Authority to Utilize Informal Procedures in Juvenile Delinquency Cases

B. Required Procedures Before Removing the Case From the Adjudicative Process

Replace the text in the second bulleted paragraph on page 98 with the following language:

- : A court may proceed on the consent calendar without authorizing a petition to be filed if it appears that the juvenile's and the public's best interests would be served by protective and supportive action. MCR 3.932(C). The court may not place a juvenile's case on the consent calendar unless the juvenile and the juvenile's parent, guardian, or legal custodian agree to the placement. Pursuant to the rule amendments effective May 1, 2003, a juvenile may *not* enter a formal plea in a consent calendar case, and the court may *not* enter an adjudication or disposition on the case. MCR 3.932(C)(2) and (6). However, "[i]f it appears to the court that the juvenile has engaged in conduct that would subject the juvenile to the jurisdiction of the court, the court may issue a written consent calendar case plan." MCR 3.932(C)(4). No provision may be made to remove the juvenile from the custody of the juvenile's parent, guardian, or legal custodian. MCR 3.932(C)(5). Except as required by Article 2 of the CVRA, formal notice of the court's placement of the juvenile's case on the consent calendar is not necessary. MCR 3.932(C)(1). A victim may attend a "consent calendar conference." MCR 3.932(C)(3).

CHAPTER 7

Victim Notification

7.5 Notification of the Proposed Removal of a Juvenile Delinquency Case From the Adjudicative Process

Insert the following paragraph on page 112 before Section 7.6:

The removal of a case under MCL 780.781(f) from the adjudicative process is expressly conditioned on compliance with the procedures set forth in the CVRA. MCR 3.932(B). See MCL 780.786b. Except as required by article 2 of the CVRA, no formal notice is required for cases placed on the consent calendar.

7.12 Notification of the Prisoner's or Juvenile's Status Within Corrections or Juvenile Agencies

F. Juvenile Commitment Review Hearings

1. Required Review Hearings in Juvenile Delinquency Cases

Replace the first paragraph on page 126 with the following language:

MCR 3.945(A)(1)* expressly provides a crime victim with the right to make a statement or to submit a written statement for use at a juvenile's periodic review hearings. When a juvenile committed to FIA for one of the offenses specified in MCL 712A.18d remains under the court's jurisdiction after the juvenile's 18th birthday, the court must hold a hearing to determine whether to extend its jurisdiction until the juvenile turns 21. MCR 3.945(B)(1). The hearing must be held before, but as nearly as possible to, the juvenile's 19th birthday. MCR 3.945(B)(1)(a). If the victim requests, the prosecuting attorney must give the victim notice of the hearing to extend jurisdiction. MCL 780.798(9).

*Former court rule MCR 5.944 was divided into two rules: MCR 3.944 (probation violation) and MCR 3.945 (dispositional review).

CHAPTER 8

The Crime Victim at Trial

8.6 Special Protections for Child or Developmentally Disabled Victim-Witnesses

Replace the last sentence on page 160 with the following language:

Amended court rule MCR 3.923(F) permits the court to appoint an impartial *person* to question a child witness in juvenile delinquency proceedings. Under the former rule, the court could appoint only an impartial psychologist or psychiatrist to address questions to a child witness.

Insert the following at the bottom of page 160:

Effective May 1, 2003, new MCR 3.922(E)(1) requires that a notice of intent be filed with the court and served on all parties with regard to a party's intent to:

*See page 163 for more information about support persons.

“(a) use a support person, including the identity of the support person, the relationship to the witness, and the anticipated location of the support person during the hearing.*

*See page 164 for information about arranging the courtroom.

“(b) request special arrangements for a closed courtroom or for restricting the view of the respondent/defendant from the witness or other special arrangements allowed under law and ordered by the court.*

*See page 165 for information on the use of videotapes and closed-circuit television.

“(c) use a videotaped deposition as permitted by law.”*

“(d) admit out-of-court hearsay statements under MCR 3.972(C)(2), including the identity of the persons to whom a statement was made, the circumstances leading to the statement, and the statement to be admitted.” MCR 3.922(E)(1)(a)–(d).

CHAPTER 9

Victim Impact Statements & Other Post-Disposition Procedures

9.2 Using Victim Impact Statements at Sentencing or Disposition

B. At Sentencing or Disposition Hearings

Add the following sentence to the second paragraph on page 200:

MCR 3.943(D)(2) also recognizes the victim's right to be present and to give an impact statement at a juvenile's dispositional hearing.

C. The Court's Use of Letters Sent by Victims and Others to the Court

Add the following language to the end of the second paragraph on page 201:

Pursuant to the court rule amendments effective May 1, 2003, MCR 3.903(A)(3) defines "confidential files" for purposes of subchapter 3.900. In addition to the former rule's reference to "the separate statement about known victims of juvenile offenses" required by the CVRA, the amended rule characterizes as confidential "the contents of a social file maintained by the court," including any victim statements.